

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 9/14/2023

September 14, 2023

VIA CM/ECF

MEMORANDUM ENDORSED

Hon. Gregory H. Woods
United States District Court, Southern District of New York
500 Pearl Street, Room 1920, New York, NY 10007

Re: *U.S. Bank National Association, et al. v. The Charitable Donor Advised Fund, L.P. and CLO HoldCo Ltd.*, **Case No. 1:21-cv-11059-GHW.**

Dear Judge Woods,

Plaintiffs/Counter-Defendants U.S. Bank, National Association, in its capacity as trustee, Acis Capital Management, L.P. (“ACM”), and Joshua N. Terry (collectively “Plaintiffs”), Defendants/Counter-Plaintiffs Charitable DAF Fund, LP a/k/a The Charitable Donor Advised Fund, L.P. (“DAF”), CLO HoldCo, Ltd. (“CLOH”), and NexPoint Diversified Real Estate Trust (“NexPoint,” and, together with DAF and CLOH, “Defendants”), and Counter-Defendant Brigade Capital Management, LP (“Brigade,” and, collectively with Plaintiffs and Defendants, the “Parties”) jointly submit this letter pursuant to Paragraph 1.E of the Court’s Individual Rules of Practice in Civil Cases to request a brief extension of the deposition deadlines set out in the Court’s Case Management Plan and Scheduling Order (the “CMO,” Dkt. 76, as amended by Dkts. 159 and 191), to accommodate the taking and/or completion of two depositions. This is the third request for an extension of this deadline. All parties consent to this request.

The Parties respectfully seek authorization to conduct the deposition of former NexPoint employee Hunter Covitz and to complete the deposition of NexPoint corporate representative James Dondero after the September 15, 2023 close of fact discovery. The Parties have been unable to schedule Mr. Covitz’s deposition prior to the current close of fact discovery deadline, but Mr. Covitz is available to be deposed on September 25. Mr. Dondero was deposed on September 8 but the Parties were unable to complete his deposition that date and agreed to continue the deposition until a date to be determined in late September or early October. The Parties request that the Court so order this joint letter incorporating the requested extension.

The Parties thank the Court for its consideration and attention to this matter.

Respectfully Submitted,

/s/ Blair Adams

Jonathan E. Pickhardt
Blair A. Adams
Brendan Carroll
Misha Boutilier
Michael R. Bloom
Jeffrey Arnier
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010
(212) 849-7000
Counsel for Plaintiffs ACIS Capital Management, L.P., and Joshua N. Terry

/s/ Mark Kotwick

Mark D. Kotwick
Thomas Ross Hooper
Julie J. Hong
SEWARD & KISSEL LLP
One Battery Park Plaza
New York, New York 10004
(202) 574-1200
Counsel for Plaintiff U.S. Bank National Association, as Trustee

/s/ Jason Hegt

Jason C. Hegt
Alexis Kellert Godfrey
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-1200
Jason.Hegt@lw.com
Alexis.Godfrey@lw.com
Attorneys for Counter-Defendant Brigade Capital Management, LP

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti
New York Bar No. 4339057
mas@sbaitilaw.com

/s/ Sawnie McEntire

Sawnie A. McEntire
Admitted Pro Hac Vice
Texas Bar No.: 13590100
Fed ID #3476
PARSONS MCENTIRE MCCLEARY PLLC
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201
Telephone: (214) 237-4300
Fax: (214) 237-4340
E-mail: smcentire@pmmlaw.com

Roger L. McCleary

Admitted Pro Hac Vice

Texas Bar No.: 133937000
Fed. ID #205
PARSONS MCENTIRE MCCLEARY PLLC
One Riverway, Suite 1800
Houston, Texas 77056
Telephone: (713) 960-7315
Fax: (713) 960-7347
E-mail: rmccleary@pmmlaw.com

Lindsey R. Skibell

E-mail: rskibell@glenngare.com

Jewel K. Tewiah

E-mail: jtewiah@glenngare.com

GLENN AGRE BERGMAN & FUENTES LLP
55 Hudson Yards, 20th Floor
New York, NY 10001
Telephone: 212.358.5600
Counsel for CLO Holdco, Ltd. and The Charitable Donor Advised Fund, L.P.

Griffin S. Rubin (Admitted pro hac vice)
Texas Bar No. 24121809
gsr@sbaitim.com
SBAITI & COMPANY PLLC
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: 214.432.2899 F: 214.853.4367
***Counsel for Defendant NexPoint Diversified
Real Estate Trust***

Application granted. The deadline for the completion of all fact discovery remains September 15, 2023, except that the depositions of former NexPoint employee Hunter Covitz and NexPoint corporate representative James Dondero may be completed no later than October 15, 2023.

SO ORDERED.

Dated: September 14, 2023
New York, New York



GREGORY H. WOODS
United States District Judge